O/K to enter EA 6/12/07

REMARKS

Claims 27-34 are pending.

Applicants respectfully traverse the present rejections.

35 U.S.C. § 101

Claims 27-34 stand rejected under 35 U.S.C. §101 as allegedly not supported by either an asserted utility that is specific and substantial or by a well-established utility. Applicants respectfully disagree with the maintained rejection of claims 27-34 for the following reasons.

Applicants' asserted utility should be accepted because it is squarely within the teaching of leading textbooks in the field, and is supported by numerous references and the declarations of skilled experts. This evidence is sufficient to demonstrate utility because an applicants' evidence rebutting the Office's rejection for lack of utility does not need to absolutely prove that the asserted utility is real. Rather, the evidence only needs to be reasonably indicative of the asserted utility. In addition, the MPEP cautions that rejections for lack of utility are rarely sustained by federal courts, and that generally speaking, a utility rejection is sustained only when the applicant asserted a utility "that could only be true if it violated a scientific principle, such as the second law of thermodynamics, or a law of nature, or was wholly inconsistent with contemporary knowledge in the art." MPEP § 2107.02 III B, citing In re Gazave, 379 F.2d 973 (CCPA 1967) (emphasis in original). Such is clearly not the case here. Moreover, **the PTO has recognized that Applicants' asserted utility is sufficient by issuing U.S. Patent No. 7,208,308 (the "'308 patent") with claims supported by the same utility as the utility asserted herein.** *See, e.g.* **Claim 1 of the '308 patent, which states that the claimed polypeptide is encoded by a nucleic acid that is amplified in lung or colon tumors.**

Issuance of the '308 patent is direct and persuasive evidence that Applicants' assertion of utility satisfies the requirements of 35 U.S.C. § 101. In particular, the protocols and

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